FEDERAL LAW ENFORCEMENT
WIRELESS USERS GROUP
WASHINGTON, D.C.

August 1, 2003

Ms. Marlene Dortch, Secretary
Federal Communications Commission
TWA325
445 Twelfth Street, SW
Washington, DC 20554

Re: Petition by the Federal Law Enforcement Wireless Users Group For Reconsideration of the Commission's Second Report and Order, *In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, WT Docket 99-87.

Dear Ms. Dortch:

On behalf of the Federal Law Enforcement Wireless Users Group (FLEWUG) pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429 (2002), enclosed herewith for filing are an original and eleven (11) copies of the FLEWUG's Petition for Reconsideration as styled above.

Kindly date stamp the additional, marked copy of this cover letter and return it to the individual hand carrying the filing.

Should you require any additional information, please contact the undersigned.

Respectfully submitted,

Julio "Rick" Murphy
U.S. Department of Homeland Security
PSWN Program Manager

McRae Smith
U.S. Department of Justice
Acting PSWN Program Manager

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended	)	WT Docket No. 99-87
	)	
	)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies	)	RM-9332

PETITION OF THE FEDERAL LAW ENFORCEMENT WIRELESS USERS GROUP FOR RECONSIDERATION OF THE SECOND REPORT AND ORDER

To: The Commission

Dated: August 1, 2003

TABLE OF CONTENTS

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In the Matter of	)	
	)	
Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended	)	WT Docket No. 99-87
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I. INTRODUCTION

1. The Federal Law Enforcement Wireless Users Group (FLEWUG)[1] hereby respectfully petitions the Federal Communications Commission (Commission) to reconsider certain aspects of the above-styled proceeding,[2] which the FLEWUG believes will ultimately be detrimental to public safety interoperability at all levels of government.

2. At the outset, the FLEWUG appreciates the Commission's efforts to improve spectrum efficiency and increase availability of new channels for public safety in the bands below 512 MHz and agrees with the Commission's purpose in the Second Report and Order (Second

[1] The FLEWUG is composed of law enforcement and public safety officials from the Department of Homeland Security, Department of the Treasury, Department of Justice, Department of the Interior, Department of Agriculture, Department of Defense, U.S. Postal Inspection Service, National Telecommunications and Information Administration, Internal Revenue Service, Federal Bureau of Investigation, U. S. Secret Service, U.S. Coast Guard, U.S. Capitol Police, Drug Enforcement Administration, U.S. Park Police, Bureau of Immigration and Customs Enforcement, Bureau of Customs and Border Protection, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Mint, National Communications System, Defense Information Systems Agency, National Security Agency, Federal Law Enforcement Training Center, Bureau of Engraving and Printing, U.S. Marshals Service, National Institute of Standards and Technology, U.S. Forest Service, U.S. Fish and Wildlife Service, Federal Bureau of Prisons, Bureau of Land Management, and National Park Service.

[2] Second Report and Order (Second R&O) and Second Further Notice of Proposed Rulemaking (Second FNPM), *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, WT Docket 99-87, February 25, 2003.

R&O) of establishing concrete requirements that govern transition dates for type acceptance of 25 kilohertz (kHz) (wideband) equipment. The FLEWUG further acknowledges that, overall, the revised Rules are necessary and appropriately crafted to ensure an effective transition toward more robust narrowband technology, which will increase channel availability and allow for growth of current public safety services. Without a clear deadline for transition, both users and manufacturers would have less incentive to move to narrowband channels or otherwise effect change toward the more efficient use of spectrum intended.

3. However, two aspects of the revised Rules, as proposed, would significantly impede the development of interoperability among federal, state, and local public safety entities. Specifically, the FLEWUG takes issue with the Commission's decision to prohibit the certification of any equipment capable of operating at one voice path per 25 kHz of spectrum, including 12.5 kHz capable equipment that also provides for a 25 kHz mode, beginning January 1, 2005.[3] The FLEWUG is also concerned with the Commission's determination to prohibit the manufacture and importation of any 150–174 MHz and 421–512 MHz band equipment that can operate on a 25 kHz bandwidth beginning January 1, 2008.[4]

4. As currently written, the above-cited provisions of the Rules will preclude a graceful migration to the next generation of technology, reduce competition among manufacturers, and inhibit interoperability among federal, state, and local public safety agencies. In so doing, the Commission runs the risk of compromising critical homeland security initiatives. Accordingly,

[3] Second R&O at para. 12.
[4] *Id.*

the FLEWUG hereby petitions the Commission to re-consider these aspects of the Second R&O as set forth below.

II. STATEMENT OF INTEREST

5. The FLEWUG is a wireless users organization established in 1994 to, "provide the law enforcement community and the public safety community with a land mobile radio/wireless telecommunications system that enhances the safety of law enforcement and public safety personnel, contributes to improved mission effectiveness, and maximizes the operational efficiency of communications systems supporting law enforcement and public safety activities."[5]

6. The concern for the proper narrowbanding of public safety spectrum has always been of central interest to the FLEWUG. Indeed, the initial purpose for creating the FLEWUG was, "to address the National Telecommunications and Information Administration (NTIA) mandate for narrowbanding of federal spectrum,"[6] including improving efficiency of spectrum use and developing common standards for land mobile radio (LMR) technology.

7. The FLEWUG, in coordination with the NTIA and the Public Safety Wireless Network (PSWN) Program, has been actively involved in developing public safety interoperability standards within the Telecommunications Industry Association (TIA) TR-8 committee, the Association of Public Safety Communication Officials (APCO) Project 25 (P25) Interface Committee (APIC), and the P25 Steering Committee. These standards, collectively named

[5] *See Memorandum of Understanding Between the Department of Justice and the Department of the Treasury,* April 20, 1994.
[6] *See* Public Safety Wireless Network (PSWN) Web site, About PSWN, *"PSWN Program Origin,"* at para. 2 (Federal Law Enforcement Wireless Users Group [FLEWUG]), www.pswn.gov, September 12, 2001.

TIA/Electronic Industries Alliance (EIA)-102 or simply known as P25,[7] are a suite of American National Standards Institute (ANSI) approved standards that have been adopted by many federal agencies as their standard for the implementation of 12.5 kHz (narrowband) technology and their solution for interoperability among federal agencies. The FLEWUG adopted by vote, and has long advocated, the P25 standard as the solution for interoperability.[8] The majority of federal agencies with a public safety mission, including the Department of Defense, have adopted P25 for their interoperability communications in conjunction with digital narrowband initiatives.

8. In addition to Federal Government users, many state and local agencies have voluntarily adopted P25 standards for refarming (narrowbanding) and interoperability. The Commission itself, responding to the recommendations of its Public Safety National Coordination Committee (NCC), the PSWN Program, and other public safety communications stakeholders and industry participants nationwide, mandated the P25 standard for the interoperability channels within the 700 megahertz (MHz) band.[9]

III. THE RESTRICTION ON CERTIFICATION OF NARROWBAND EQUIPMENT

9. In the amended Rules, the Commission has prohibited the certification of any equipment capable of operating at one voice path per 25 kHz of spectrum, *i.e.*, equipment that includes a

[7] TIA/EIA Telecommunications Systems Bulletin, APCO Project 25 System and Standards Definition, TIA/EIA-102-A, November 1995.
[8] *See, e.g.,* FLEWUG Petition for Reconsideration and Clarification, *In the Matter of the Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket 96–86, December 2, 1998, at paras 33–35.
[9] Fourth R&O, WT Docket 96–86, January 11, 2001, at paras 69–72.

25 kHz mode, beginning January 1, 2005.[10] Because the TIA/EIA 102/P25 standard includes a 25 kHz mode for interoperability and backward compatibility with legacy systems,[11] this ruling will effectively stop the ongoing production and implementation of P25 equipment, the primary standards-based interoperability solution available today. To help make this a graceful transition, the FLEWUG suggests extending the January 1, 2005, certification deadline to January 1, 2008.

10. Today, implementation of P25 systems is far from complete, even among the major agencies of the Federal Government with several years "head start" on narrowbanding initiatives and more reliable funding streams. The procurement of these systems for the Nation's 58,000 state and local public safety entities is entirely dependent on public funding, usually requiring either special line-item appropriations and/or bond issuance. Amortization of these systems for their full lifecycle is essential. This process invariably spans several years, far longer than for private sector communications networks, where market dynamics require continual technology refreshment and amortization cycles are correspondingly shorter. In effect, the Commission's ruling amounts to an unfunded mandate affecting most of the Federal Government, and nearly every state and local government nationwide.

11. Moreover, even if viable next-generation technology could be made available within so short a timeline, the regulatory foreclosure of markets for current P25 equipment will not allow vendors to recoup their investment costs for developing the current generation P25 equipment, and may have potentially serious effects, particularly in the current depressed technology market.

[10] Second R&O at para. 22.

IV. THE RESTRICTION ON MANUFACTURE AND IMPORTATION OF NARROWBAND EQUIPMENT

12. In the amended Rules, the Commission has prohibited the manufacture and importation of any 150–174 MHz and 421–512 MHz band equipment that can operate on a 25 kHz bandwidth, beginning January 1, 2008.[12] For the same reasons described in the previous section,[13] the FLEWUG cites the tremendous burden that this provision will create, both on the state and local public safety community, as well as the equipment vendor community, and in so doing will adversely impact both economic development and homeland security initiatives. To mitigate the impact, the FLEWUG recommends moving the manufacture and importation deadline from January 1, 2008, to January 1, 2013, to permit backward compatibility and continue to make the suite of P25 equipment available.

13. Additionally, since the 162–174 MHz band is a federally allocated band, the FLEWUG notes that it is subject to an entirely different regulatory scheme under the authority of the NTIA rather than the Commission.[14]

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[11] TIA/EIA Telecommunications Systems Bulletin, APCO Project 25 System and Standards Definition, TIA/EIA-102-A, Section 5.3.4 Backwards Compatibility, pgs 30–31, November 1995.
[12] Second R&O at para. 25.
[13] *See* paras 9-11, *supra*.
[14] *See generally*, *NTIA Manual of Regulations & Procedures for Federal Radio Frequency Management*, rev. October 31, 2000.

V. THE FINAL NARROWBAND TRANSITION DEADLINE

14. The FLEWUG supports the Commission's aggressive actions in response to the demands in the user community for increased spectrum efficiency resulting in more available spectrum.[15] It is the belief of the FLEWUG that by enabling backward compatibility plus manufacture and importation of multimode equipment through 2013, public safety agencies across the Nation would be able to complete the transition to narrowband operations in a more timely fashion. Therefore, the FLEWUG suggests that the migration end date for public safety users be moved from January 1, 2018, to January 1, 2013, in an effort to guarantee a complete and rapid transition without sacrificing communications interoperability.

VI. CONCLUSION

15. Accordingly, the FLEWUG hereby petitions the Commission to reconsider its prohibitions on certification of any equipment capable of operating at one voice path per 25 kHz of spectrum, including 12.5 capable equipment that also provides for a 25 kHz mode, beginning January 1, 2005, manufacture and importation of any 150–174 MHz and 421–512 MHz band equipment that can operate on a 25 kHz bandwidth beginning January 1, 2008, and completion of the transition to 12.5 kHz per voice path technology for all public safety private land mobile users in the above mentioned bands by January 1, 2018. The FLEWUG reiterates its recommendation that the Commission reassign all of these deadlines to January 1, 2013.

[15] Second R&O at para. 11.

16. Alternatively, the FLEWUG requests that a final Order concerning these prohibitions be deferred until further study can be conducted to account for the practical difficulties that would result in implementation of the current Rules and a further rulemaking initiated pursuant to these findings.

17. As always, the FLEWUG thanks the Commission for the opportunity to submit recommendations for consideration in addressing the concerns that affect the public safety community.

Respectfully submitted,

Julio "Rick" Murphy
U.S. Department of Homeland Security
PSWN Program Manager

McRae Smith
U.S. Department of Justice
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CERTIFICATE OF SERVICE

I, David E. Pickeral, Associate, Booz Allen Hamilton, 8283 Greensboro Drive, McLean, Virginia, 22102–3838, do hereby certify that on this date I caused to be served, by first–class mail, postage prepaid (or by hand where noted) six copies of the Federal Law Enforcement Wireless Users Group's Petition for Reconsideration of the Commission's Second Report and Order, *In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies,* the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Fair Oaks, Virginia this 1st day of August 2003.

David E. Pickeral

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